



Ottawa, Thursday, April 2, 1998

**Appeal No. AP-96-083**

IN THE MATTER OF a motion by the Deputy Minister of National Revenue requesting that the Canadian International Trade Tribunal strike off the appeal on the basis that the appellant failed to meet the filing requirements under section 61 of the *Special Import Measures Act*.

**BETWEEN**

**JARVIS IMPORTS AND SALES LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The motion is dismissed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay  
Raynald Guay  
Member

Charles A. Gracey  
Charles A. Gracey  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

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**BETWEEN**

**JARVIS IMPORTS AND SALES LTD.**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**REASONS FOR DECISION**

On November 8, 1996, the Deputy Minister of National Revenue filed a motion with the Tribunal requesting an order to strike off Appeal No. AP-96-083 on the following grounds:

- the Appellant failed to file its Notice of Appeal within the ninety day time limit provided under section 61 of the *Special Import Measures Act* ..., and
- [the appellant] failed to file a Notice of Appeal with the [respondent] as required under Rule 31(1) of the *Canadian International Trade Tribunal Rules*.

With respect to the first ground, counsel for the respondent referred to the language of subsection 61(1) of the *Special Import Measures Act*<sup>1</sup> (SIMA) which, counsel argued, is clear and unambiguous as to the period of time within which an appeal must be made and as to the filing procedure. Counsel also referred to subrule 12(7) of the of the *Canadian International Trade Tribunal Rules*<sup>2</sup> (CITT Rules) which provide that “[i]n the absence of any proof of the date of mailing ..., the date shown by the date received stamp placed on the document by the Secretary shall be considered to be the date of filing of the document.” Counsel noted that the respondent’s decision was dated June 20, 1996, and that the notice of appeal was dated September 18, 1996, but was date-stamped by the Tribunal as having been received on September 23, 1996. Counsel submitted that, having been received by the Tribunal on September 23, 1996, the notice of appeal was filed beyond the 90-day statutory time limit and the Tribunal has no jurisdiction to further extend that period.

The appellant submitted that its appeal was filed within the prescribed time frame. Moreover, the appellant submitted that the fact that it sent the appeal to the wrong organization should not be held against it since it is not a legal firm and is not familiar with all of the government’s different organizations, rules and regulations. In the appellant’s view, there should be some accommodation for it as a small business.

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1. R.S.C. 1985, c. S-15.

2. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912.

On the issue of the date of filing of the appellant's notice of appeal, the Tribunal is satisfied that the appellant mailed the notice of appeal to the Tribunal on September 18, 1996, within 90 days after June 20, 1996, the date of the respondent's re-determination, which is being appealed to the Tribunal. Although section 61 of SIMA sets out that an appeal must be filed within 90 days after the day on which a re-determination was made, subrule 12(7) of the CITT Rules provides as follows:

In the absence of any proof of the date of mailing or of transmission by fax of a document, the date shown by the date received stamp placed on the document by the Secretary shall be considered to be the date of filing of the document.

The Tribunal has held, in a number of recent decisions,<sup>3</sup> that an application for a federal sales tax inventory rebate under the *Excise Tax Act*<sup>4</sup> is considered to be "filed" when it is mailed and that the date of the postmark on the envelope is evidence of the date of mailing.

As is the standard procedure followed by registry staff at the Tribunal, when the notice of appeal was received, it was noted in the file that the postmark on the envelope showed the date of mailing as September 18, 1996. The calculation of the filing period was also noted in the file, which was from and including the date of the re-determination (June 20, 1996) to and including the date of the postmark (September 18, 1996). The Tribunal is, therefore, satisfied that the notice of appeal was filed with the Tribunal within the 90-day statutory time limit set out in section 61 of SIMA.

The Tribunal notes that subsection 61(1) of SIMA also requires that the appellant file a notice of appeal with the respondent. However, in this case, the notice of appeal addressed to the respondent was mailed to the Tribunal on September 18, 1996, and date-stamped on September 23, 1996. On September 25, 1996, the Tribunal acknowledged receipt of the notice of appeal and copied this acknowledgement to the respondent. It was not until October 22, 1996, that the respondent notified the Tribunal that a copy of the notice of appeal had not been filed with the respondent.

The Tribunal does not dispute that the notice of appeal in this appeal was not filed by the appellant at the office of the respondent within 90 days after June 20, 1996, the date of the re-determination. However, the Tribunal's normal procedure in circumstances such as those under dispute, where the notice of appeal addressed to the respondent has been mistakenly filed with the Tribunal, is to forward the notice of appeal to the respondent.

The Tribunal believes that this procedure reflects that the Tribunal is an administrative agency, intended to be less formal than a court and accessible to unrepresented appellants. Moreover, the Tribunal notes that this procedure has been accepted by the respondent in the past. If, when the above-referenced notice of appeal was filed with the Tribunal, registry staff had taken note of the enclosed notice of appeal addressed to the respondent, staff would have forwarded the notice to the respondent immediately, as has been done regularly in the past and accepted by the respondent.

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3. *Hergert Electric Ltd. v. The Minister of National Revenue*, Appeal No. AP-93-089, June 7, 1994; *M-M Electric - A Division of Rio de Janeiro Holdings Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-169, April 28, 1994; *Moto Optical Ltd. v. The Minister of National Revenue*, Appeal No. AP-92-283, February 23, 1994.

4. R.S.C. 1985, c. E-15.

While the Tribunal acknowledges that it is the appellant's responsibility to file a notice of appeal with the respondent, the Tribunal is of the view that, in the circumstances of this case, it is appropriate to conclude that the appeal was filed with the respondent in a timely manner. The Tribunal, therefore, considers the notice of appeal to the respondent, which was mailed to the Tribunal on September 18, 1996, and subsequently forwarded to the respondent by the Tribunal, to have been filed with the respondent within the time limit set out in section 61 of SIMA.

Accordingly, the respondent's motion is dismissed and the Tribunal will proceed to schedule this appeal for hearing on the earliest available date.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Raynald Guay

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Member

Charles A. Gracey

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Member